IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 222 OF 2006

WITH

CIVIL APPLIICATION NO. 1376 OF 2006

IN

APPEAL FROM ORDER NO.222 OF 2006

The General Manager,
Western Railway, Churchgate. & Anr. .. Appellants

versus

Messrs. Vantage Advertising Pvt.Ltd. .. Respondent

...

Mr. Suresh Kumar for the appellant.

Mr. Navin Parekh for the respondent.

CORAM : D.G. KARNIK, J

DATED : 22nd November 2006

P.C.:

1. Heard the learned counsel. Arguable case is made out. Hence, appeal is admitted.

2. As regards the interim relief, learned counsel for the appellant submits that the order of injunction granted by the trial court is too harsh and contrary to law and needs to be stayed.

3. The respondent filed a suit against the appellants for an injunction restraining the appellants from inviting quotations or floating tenders for two giant/jumbo hoardings (8 club hoardings and 4 club hoardings)described in the plaint. He further claimed an injunction restraining the appellants from taking any steps in connection with the implementation of the tenders floated by the defendants for advertising. In the suit he took out a motion for interim injunction, which was allowed.

4. According to the respondent, the railway administration previously had 12 small hoardings. The respondent prepared a scheme for clubbing of the said hoardings into two jumbo hoardings. By clubbing the small hoardings the respondent created two jumbo hoardings and incurred the expenditure of about Rs.48 lakhs in the year 2002 or thereabout. At that time, railway administration gave an assurance to the

respondent that it would be given a contract of use of those hoardings for a period of 10 years. However, in breach of the said assurance the respondents floated tenders in the year 2005 and therefore the respondent filed the suit for injunctions as mentioned above. The trial court granted the injunction which is challenged in this appeal.

5. Learned counsel for the respondent invited my attention to the minutes of the meeting, copy of which is annexed as Exhibit-SS at page 151 of the compilation. He submitted that the said minutes clearly disclose that the officers of the appellants had given an assurance that the respondent would be given a right to advertise on the said hoardings atleast for a period of five years. Therefore, the appellants are not entitled to invite tenders for said hoardings.

6. In my view, the respondent is not entitled to the relief of injunction for reasons more than one. Firstly, the minutes on which strong reliance is placed by the appellants do not constitute a contract. They are not signed by anybody - not by any officer of the appellants and not even by the respondent. Under Article 299 of the Constitution of India, any contract with the

Union is required to be entered into in a particular form and in a particular manner. The minutes are not in that form and nor in that manner so as to constitute a contract. Secondly, assuming that the minutes do constitute a contract or do amount to an estoppal, there is nothing in the minutes to suggest that the appellants had agreed that respondent would have an exclusive contract for five years. The minutes only note the contentions of the respondent for exclusive right for use of the hoardings. The respondent was interested in a 10 year contract. The appellants had pointed out that such a contract cannot be entered into and at the most, could consider 5 year period exclusive right for the use of hoardings. The final part of the minutes reads as follows:

> "These offers were not acceptable to the railway administration.

Thus, the minutes were only a part of the negotiations and there was no concluded contract.

7. It is pertinent to note that the tenders were

floated by the railway administration that respondent participated in the tender and was unsuccessful. Mr.Parekh, learned counsel for the respondent when asked by me conceded that the respondent had participated in the tender but was not successful. Thus having participated in the tender process and being unsuccessful, the respondent cannot claim an injunction.

8. The respondent previously was advertising on the suit hoardings and has failed in the tender auction. The respondent cannot, by an indirect method continue the previous contract and defeat the claim of the successful tenderer. It is also worthwhile to note that new successful tenderer has not been joined as party to the suit. No notice u/s.80 of the Code of Civil Procedure was issued prior to the filing of the suit nor was leave obtained to file the suit without notice. Only a vague statement is made in paragraph nos.68(f)of the plaint that that provisions of section 80 of the Code of Civil Procedure are discriminatory and violative of Article 14 of the Constitution of India. In the civil suit the constitutional validity of section 80 cannot be challenged and has rightly not been challenged. The suit without notice u/s.80 of the CPC is prima facie not maintainable. In the circumstances, the trial court

ought not to have granted the injunction.

9. For these reasons, the Civil Application is allowed and the order of the trial court granting injunction is stayed.

10. At the request of learned counsel for the respondent, ad-interim order passed by this Court on 5th April 2006 is continued for a period of four weeks.

(D.G. KARNIK, J)